

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE AT NASHVILLE**

MOUNT VERNON FIRE
INSURANCE COMPANY,

Plaintiff,

v.

NO.: 3:16-cv-00689

LIEM CONSTRUCTION, INC.
R.F. JONES CONSTRUCTION, LLC, and'
ASHLER OAKS, LLC d/b/a ROUNDTREE APARTMENTS

Defendants.

**MOUNT VERNON FIRE INSURANCE COMPANY'S MOTION FOR
SUMMARY JUDGMENT**

The Plaintiff, Mount Vernon Fire Insurance Company, ("MVFIC"), by and through counsel, pursuant to Rule 56 of the Federal Rules of Civil Procedure now moves this Court for an Order granting it summary judgment as there exists no genuine issue of material fact and it is entitled to judgment as a matter of law. MVFIC would show that the insurance policy it issued to Liem Construction, Inc. ("Liem") should be declared *void ab initio* pursuant to T.C.A. § 56-6-103 due to misrepresentations in Liem's applications for insurance, which increased the risk of loss MVFIC, thus entitling it to a judgment as a matter of law.

Further, as separate and independent grounds for summary judgment, MVFIC would show that there exists no genuine issue of material fact that the insurance policy which MVFIC issued to Liem provides no coverage. Therefore, MVFIC has no duty to indemnify or defend, for any claims arising from the matters which form the basis of the lawsuit styled *Ashler Oaks, LLC v. R.F. Jones Construction, LLC and Liem Construction, Inc.*, filed in the *Chancery Court of Davidson County, Tennessee* docket number 15-215-II, (the "Underlying

Complaint") because of the policy's Classification Limitation Endorsement excluding from coverage any classification(s) and code(s) not specifically listed on the Declarations page of the policy.

In support of its Motion, MVFIC relies upon the deposition of Ashler Oaks' Responses to MVFIC's Interrogatories and Responses to Requests for Production of Documents; the Underlying Complaint; Liem Construction's Responses to Interrogatories and Request for Production of Documents in the "Underlying Complaint"; deposition of Luis Espinoza and Exhibits 2 and 3 thereto; Ashler Oaks' Answer to the Underlying Complaint; the Complaint for Declaratory Judgment and exhibits thereto; MVFIC's Memorandum of Law in Support of this Motion for Summary Judgment; MVFIC's Statement of Facts and all exhibits thereto; and the entire record in this cause.

WHEREFORE, PREMISES CONSIDERED, Mount Vernon Fire Insurance Company prays that summary judgment be entered in its favor and that this Court declare that the subject policy of insurance is void ab initio, or in the alternative, that MVFIC has no duty to indemnify or defend any Defendant against the claims arising out of the matters asserted in the underlying complaint. MVFIC further prays that the Court make a determination that there is not just reason for delay and expressly direct the entry of final judgment in its favor pursuant to Federal Rule of Civil Procedure 54(b).

Respectfully submitted,

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Certificate of Service

I hereby certify that on January 25, 2017 a copy of the foregoing Mount Vernon Fire Insurance Company's Motion for Summary Judgment was filed electronically via the court's electronic filing system and served via the court's electronic filing system to:

W. Gary Blackburn
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Law Offices of W. Gary Blackburn
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AND by United States Mail, postage prepaid, to the following:

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